

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNIPLEX CONSTRUCTION, LLC, a
Washington Limited Liability Company,

Plaintiff,

v.

OHIO SECURITY INSURANCE
COMPANY, a foreign corporation,

Defendant.

No.:

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. Section 1441 and 1446, Defendant Ohio Security Insurance Company (“Ohio”) submits this Notice of Removal.

I. PROCEDURAL POSTURE

1. On September 7, 2021, Plaintiff Uniplex Construction, LLC (“Uniplex”) filed a Complaint for Declaratory Relief and Monetary Damages in Washington State Superior Court in and for King County as Case No. 21-2-11825-5 SEA (the “State Court Action”). Uniplex served Ohio with a copy of the Summons and Complaint via the Washington State Insurance Commissioner on September 22, 2021. Copies of the summons and complaint are attached to this notice.

II. GROUND FOR REMOVAL

2. Removal is proper because the State Court Action is one over which this Court has original jurisdiction based on diversity of citizenship pursuant to 28 U.S.C. § 1332(a).

3. Complete diversity exists because Plaintiff and Ohio are not citizens of the same state.

4. Plaintiff is a Washington Limited Liability Company whose members reside in, and are domiciled in, in the State of Washington. Plaintiff is therefore a citizen of the state of Washington.

5. Ohio is a company organized under the laws of the State of New Hampshire with its principal place of business located at 175 Berkeley St., Boston, Massachusetts 02116. Ohio is therefore a citizen of the states of New Hampshire and Massachusetts.

6. The amount in controversy requirement is satisfied because Ohio has a good faith basis to believe Plaintiff is seeking damages in excess of \$75,000, exclusive of interest and costs. A notice of removal may assert the amount in controversy if the initial pleading in the state court action does not demand a specific sum. 28 U.S.C. § 1446(c)(2)(a). The defendant need only allege a “short and plain statement” supporting the amount-in-controversy and this allegation is accepted when not contested. *Dart Cherokee Basin Operating Co., LLC v. Owens*, 574 U.S. 81, 87 (2014).

7. Plaintiff’s Complaint in the State Court Action does not demand a specific sum. The State Court Action is a dispute regarding liability coverage under a commercial general liability policy issued by Ohio. Plaintiff claims that it is entitled to defense and indemnity coverage with respect to an underlying state court lawsuit, *Laura Koutsky, et al. v. Uniplex Construction, LLC*, Washington State Superior Court, King County, No. 21-2-07737-1 SEA (the “Underlying Action”). In the Complaint, Plaintiff alleges that the amount in controversy “may or may not exceed \$75,000, depending upon events which may occur in connection with the prosecution and defense of the [Underlying Action]....”

1 8. In the Underlying Action, homeowners Laura Koutsky and Fred Forster filed
2 suit against Plaintiff for alleged defects in the construction of a deck. Although Plaintiff
3 provided a copy of the complaint in the Underlying Action to Ohio, that complaint did not
4 specify the amount of damages resulting from the alleged defects. Nor did any of the other
5 documents submitted by Plaintiff to Ohio in connection with its request for insurance coverage.

6 9. In order to determine the amount in controversy, Ohio served Plaintiff with
7 discovery requests in the State Court Action on November 3, 2021. The deadline to respond
8 to those requests is December 3, 2021. In the interim, however, Plaintiff informed Ohio of a
9 mediation scheduled in the Underlying Action and requested Ohio's participation in the
10 mediation. In connection with that request, Plaintiff produced to Ohio certain documents
11 which Ohio had requested in its discovery requests and which Plaintiff acknowledged were
12 responsive to Ohio's discovery requests, including the project file for the construction project
13 at issue in the Underlying Action. Ohio first received these documents on November 24, 2021.

14 10. Plaintiff's document production reveals that Ms. Koutsky and Mr. Forster are
15 seeking at least \$92,200 in the Underlying Action. This is the amount Koutsky and Forster
16 allege it will cost to repair the alleged construction defects. By virtue of its claim that Ohio
17 had and breached a duty to indemnify Plaintiff for the amount of the damage, Plaintiff is
18 necessarily seeking damages in excess of \$92,200 based on its indemnity claim alone.

19 11. In addition, Plaintiff's Complaint in the State Court Action alleges that Ohio
20 breached a duty to defend Plaintiff in the Underlying Action. Plaintiff does not specify the
21 amount of damages it claims to have sustained as a result of Ohio's alleged failure. While
22 Ohio denies that any such claim has merit, Ohio notes, solely for jurisdictional purposes, that
23 Plaintiff's allegation that Ohio breached its duty to defend further increases the amount in
24 controversy beyond the \$92,200 at issue with respect to Plaintiff's indemnity claim.

25 12. In addition to these contractual claims, Plaintiff's Complaint in the State Court
26 Action separately seeks damages under various extra-contractual theories of liability,

1 including under the Washington Consumer Protection Act and common law negligence. In
 2 addition, Plaintiff also purports to reserve the right to assert a cause of action under the
 3 Insurance Fair Conduct Act (“IFCA”).

4 13. Accordingly, based on the value of the underlying claim for which Plaintiff
 5 seeks defense and indemnification and Plaintiff’s various extra-contractual claims, the amount
 6 in controversy exceeds \$75,000, exclusive of interest and costs.

7 **III. TIMELINESS OF REMOVAL**

8 14. This Notice of Removal is timely because it is filed within 30 days after Ohio
 9 received information indicating that the amount in controversy exceeds \$75,000. The removal
 10 statutes provide that “if the case stated by the initial pleading is not removable, a notice of
 11 removal may be filed within 30 days after receipt by the defendant, through service or
 12 otherwise, of a copy of an amended pleading, motion, order or other paper from which it may
 13 first be ascertained that the case is one which is or has become removable.” 28 U.S.C.
 14 1446(b)(3).

15 15. This matter was not removable based on the initial pleadings or information
 16 available to Ohio at the time. As noted above, the complaint in the State Court Action did not
 17 allege the amount in controversy, and specifically stated that it “may or may not” exceed
 18 \$75,000. Ohio considered the allegations in the Underlying Action and documents within its
 19 possession, but none indicated whether or not the amount in controversy would exceed the
 20 jurisdictional threshold.

21 16. On November 3, 2021, Ohio served Plaintiff with its First Interrogatories and
 22 Requests for Production. Those requests sought information necessary to establish the amount
 23 of Plaintiff’s alleged damages, including the following:

24 **INTERROGATORY NO. 2:** Identify each and every item and
 25 amount of damages you claim in this lawsuit to have sustained as
 26 a result of Ohio’s alleged breach of contract.

1 17. On November 24, 2021, Uniplex produced its project file for the construction
2 project at issue in the Underlying Action. That project file contains an estimate indicating that
3 it would cost \$92,200 to repair the alleged defects in the deck.

4 18. By virtue of 28 U.S.C. 1446(c)(3), the removal statutes make clear that
5 information provided in response to discovery constitutes an “other paper” for purposes of 28
6 U.S.C. 1446(b)(3). Having filed this Notice of Removal within 30 days after receiving
7 documents in response to Ohio’s discovery requests, Ohio’s Notice of Removal is timely.

8 **IV. VENUE AND INTRADISTRICT ASSIGNMENT**

9 19. Venue is proper in the United States District Court for the Western District of
10 Washington based on 28 U.S.C. § 1441(a) because this is the district embracing the place
11 where the State Court Action is captioned.

12 20. Assignment is proper to the Seattle Division because the state court action was
13 filed in King County, Washington.

14 **V. STATE COURT PLEADINGS**

15 21. In accordance with 28 U.S.C. §1446(a) and LCR 101, true and correct copies of
16 the process, pleadings, and orders, as well as all additional records and proceedings in the State
17 Court Action accompany this Notice of Removal.

18 22. In accordance with 28 U.S.C. § 1446(d), Ohio will file a Notice to Plaintiff and
19 State Court Clerk in King County Superior Court of Removal to the U.S. District Court,
20 attached to which will be a copy of this Notice.

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1 DATED: December 1, 2021

2 BULLIVANT HOUSER BAILEY PC

3
4 By /s/ Michael A. Guadagno
5 Michael A. Guadagno, WSBA #34633
6 E-mail: michael.guadagno@bullivant.com

7 By /s/ Jared F. Kiess
8 Jared F. Kiess, WSBA #54532
9 E-mail: jared.kiess@bullivant.com

10 Attorneys for Defendant Ohio Security Insurance
Company

11 4856-2167-9108.1

CERTIFICATE OF SERVICE

I hereby certify that on December 1, 2021, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF e-filing system which will send notification of such filing to the persons listed below:

Richard T. Beal, Jr.
James J. Grossman
ASHBAUGH BEAL LLP
701 Fifth Avenue, Suite 4400
Seattle, WA 98104
rbeal@ashbaughbeal.com
JGrossman@ashbaughbeal.com
CBrugalette@ashbaughbeal.com

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via hand delivery.
via first class mail.
via email
CM/ECF E-service

Attorneys for Plaintiff

Dated: December 1, 2021.

/s/ Kristin Anderson

Kristin Anderson, Legal Assistant